

Application Number 10/728,327
Amendment dated 2 November 2006
Reply to Office Action of 12 May 2006

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Remarks/Arguments

Applicant has cancelled claims 4, 7, 15, 19 and 32, and has not added any new claims. Therefore, Claims 1–3, 5, 6, 8–14, 16–18 and 20–31 remain pending in this application.

Claim Rejections Under 35 U.S.C. § 112(1).

Claims 4, 7, 15, 19 and 32 stand rejected under 35 U.S.C. § 112(1) for failing to comply with the enablement requirement. To advance prosecution of this application, Applicant has cancelled Claims 4, 7, 15, 19 and 32 without prejudice to their presentation in one or more continuation applications. Therefore, Applicant respectfully requests that these rejections be withdrawn.

Claim Rejections based on Wynkoop, Stoudt and Dial.

Claims 1–4, 6, 9, 11–14, 16 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined disclosure of U.S. Patent 645,656 ("Wynkoop"), U.S. Patent 5,489,077 ("Stoudt") and U.S. Patent 1,449,894 ("Dial"). Claims 1 and 11 are independent. Claim 4 has been cancelled.

Wynkoop discloses a canopy that is supported by four upright posts A that are joined together by cross bars C. As illustrated in Figures 2 and 3, the cross bars C are "secured" to the upright posts A with a nut E, "thereby providing a rigid frame". Furthermore, as illustrated in Figures 1 and 2, the upright posts A have a fixed height, and each are vertically fixed into a corresponding base B. The base B is either round and flat (for household applications), or is cross shaped with holes for securing with stakes (for other applications). See Wynkoop at 1:43–75 and Figures 1–3.

Stoudt discloses a sign support base that includes a staff base 12 and a plurality of legs 14, 18 that are pivotally mounted to plates 16, 20 extending from the base 12. The legs 14, 18 have a fixed height. See Stoudt at 2:24–25 and Figure 1. Dial discloses a collapsible tent that can be deployed in an umbrella-like fashion, and that includes leg members 29 of telescopic formation that extend downwardly from the four

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corners of the tent. The leg members 29 are mounted into jaws 22 that secure the leg members 29 into a fixed orientation with respect to the horizontal arms 21. See Dial at 2:122–3:8 and Figures 2 and 6.

Claim 1. In contrast to the combined disclosure of Wynkoop, Stoudt and Dial, independent Claim 1 recites, among other things

a plurality of elongate legs having an adjustable length, the elongate legs attached to the lower portion of the vertical support tubes, such that an angle α exists between the elongate leg and the vertical support tube axis, wherein the angle α is adjustable;

a top elbow assembly mounted on the upper portion of the vertical support tubes, the top elbow assembly having a side tube holder positioned in a substantially perpendicular configuration with respect to the vertical support tube axis, wherein the side tube holder can be rotated around the vertical support tube axis; [emphasis added]

Applicant respectfully disagrees with the Examiner's characterization of Wynkoop as teaching a side tube holder that "can be rotated around the vertical support tube axis". Applicant also respectfully traverses the Examiner's assertion that it would be obvious to replace the flat base B of Wynkoop with the pivotally mounted legs 14, 18 of Stoudt.

First, none of the cited references disclose a side tube holder that "can be rotated around the vertical support tube axis". To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (see MPEP 2143.03). The Examiner has failed to identify a reference that discloses a side tube holder that "can be rotated around the vertical support tube axis". Applicant respectfully disagrees with the Examiner's assertion that this feature is disclosed in Wynkoop. Wynkoop specifically discloses that the bars C are "secured in place by means of the nut E, thereby providing a rigid frame..." (emphasis added) (see Wynkoop at 1:63–75). Not only does this disclosure fail to teach the combination of features recited in Claim 1, but it specifically teaches away from such a combination of features by disclosing how to form a rigid frame having members that are secured in place. Indeed, the fact that the Wynkoop apparatus uses four upright posts A and fixed-length side bars C that are arranged to form a four-sided enclosure necessarily precludes the rotation of the side bars C around the upright posts A. A *prima facie* case of obviousness may be rebutted by showing that the art, in any material respect,

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teaches away from the claimed invention (see MPEP 2144.05(III)). Therefore, Applicant respectfully submits that none of the cited references disclose a side tube holder that "can be rotated around the vertical support tube axis".

Second, an ordinarily skilled artisan would have no motivation to replace the flat base of Wynkoop with the pivotally mounted legs of Stoudt. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so (see MPEP 2143.01(I)). The Examiner has failed to point to any suggestion or motivation to make the asserted combination and modification, stating only that doing so would "more securely support the tent". Even assuming for the sake of argument that this assertion were correct, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (see MPEP 2143.01(III)). Neither Wynkoop nor Stoudt contain any suggestion of the desirability of using pivotally mounted legs to support a canopy. Indeed, Wynkoop specifically discloses that it is preferred to use a "round and flat" base (for household applications) or cross shaped with holes for securing with stakes (for other applications) (see Wynkoop at 1:48–56). Neither of these configurations are compatible with the pivotally mounted legs of Stoudt. Therefore, Applicant respectfully submits that an ordinarily skilled artisan would have no motivation to replace the flat base of Wynkoop with the pivotally mounted legs of Stoudt.

Third, Dial cannot remedy the deficiencies of Wynkoop and Stoudt. Dial does not disclose "a plurality of elongate legs having an adjustable length, the elongate legs attached to the lower portion of the vertical support tubes, such that an angle α exists between the elongate leg and the vertical support tube axis, wherein the angle α is adjustable," as recited in Claim 1. Nor does Dial disclose "a top elbow assembly mounted on the upper portion of the vertical support tubes, the top elbow assembly having a side tube holder positioned in a substantially perpendicular configuration with respect to the vertical support tube axis, wherein the side tube holder can be rotated around the vertical support tube axis," as is also recited in Claim 1. Furthermore, Dial does not provide any motivation to combine the teachings of Wynkoop and Stoudt.

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Therefore, Applicant respectfully submits that the teachings of Dial cannot remedy the deficiencies of Wynkoop and Stoudt.

Based on the foregoing, Applicant respectfully submits that the combination of features recited in Claim 1 is patentable over the combined disclosure of Wynkoop, Stoudt and Dial, and thus respectfully requests that the rejection of Claim 1 be withdrawn. Claims 2, 3, 6 and 9 depend from Claim 1, and further define additional features of the claimed invention. Applicant respectfully submits that Claims 2, 3, 6 and 9 are allowable for at least the same reasons that Claim 1 is allowable, and thus respectfully requests that the rejection of Claims 2, 3, 6 and 9 be withdrawn as well. Claim 4 has been cancelled.

Claim 11. In contrast to the combined disclosure of Wynkoop, Stoudt and Dial, independent Claim 11 recites, among other things

[a] leg assembly having a plurality of elongate legs with an adjustable length, the elongate legs attached to the vertical support post such that an angle α exists between the elongate leg and the vertical support post, wherein the angle α is adjustable; [emphasis added]

Applicant respectfully traverses the Examiner's assertion that it would be obvious to replace the flat base B of Wynkoop with the pivotally mounted legs 14, 18 of Stoudt.

First, an ordinarily skilled artisan would have no motivation to replace the flat base of Wynkoop with the pivotally mounted legs of Stoudt. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so (see MPEP 2143.01(I)). The Examiner has failed to point to any suggestion or motivation to make the asserted combination and modification, stating only that doing so would "more securely support the tent". Even assuming for the sake of argument that this assertion were correct, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (see MPEP 2143.01(III)). Neither Wynkoop nor Stoudt contain any suggestion of the desirability of using pivotally mounted legs to support a canopy. Indeed, Wynkoop specifically discloses that it is preferred to use a "round and flat" base (for household applications) or cross shaped with holes for

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securing with stakes (for other applications) (see Wynkoop at 1:48–56). Neither of these configurations are compatible with the pivotally mounted legs of Stoudt. Therefore, Applicant respectfully submits that an ordinarily skilled artisan would have no motivation to replace the flat base of Wynkoop with the pivotally mounted legs of Stoudt.

Second, Dial cannot remedy the deficiencies of Wynkoop and Stoudt. Dial does not disclose a "leg assembly having a plurality of elongate legs with an adjustable length, the elongate legs attached to the vertical support post such than an angle α exists between the elongate leg and the vertical support post, wherein the angle α is adjustable," as recited in Claim 11. Furthermore, Dial does not provide any motivation to combine the teachings of Wynkoop and Stoudt. Therefore, Applicant respectfully submits that the teachings of Dial cannot remedy the deficiencies of Wynkoop and Stoudt.

Based on the foregoing, Applicant respectfully submits that the combination of features recited in Claim 11 is patentable over the combined disclosure of Wynkoop, Stoudt and Dial, and thus respectfully requests that the rejection of Claim 11 be withdrawn. Claims 12–14, 16 and 18 depend from Claim 11, and further define additional features of the claimed invention. Applicant respectfully submits that Claims 12–14, 16 and 18 are allowable for at least the same reasons that Claim 11 is allowable, and thus respectfully requests that the rejection of Claims 12–14, 16 and 18 be withdrawn as well.

Claim Rejections based on Wynkoop, Stoudt, Dial and Ditch.

Claims 5 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined disclosure of Wynkoop, Stoudt, Dial and U.S. Patent 5,340,066 ("Ditch"). Claim 5 depends from independent Claim 1, and Claim 17 depends from independent Claim 11. Ditch discloses a support stand that includes a ground-engaging tip 56 of rubber (see Dial at 1:5–7 and 2:57–61). However, Ditch cannot remedy the deficiencies of Wynkoop, Stoudt and Dial as expounded herein with respect to independent Claims 1 and 11. Therefore, Applicant respectfully submits that Claim 5 is allowable for at least the same reasons that Claim 1 is allowable, and thus respectfully

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requests that the rejection of Claim 5 be withdrawn. Likewise, Applicant respectfully submits that Claim 17 is allowable for at least the same reasons that Claim 11 is allowable, and thus respectfully requests that the rejection of Claim 17 be withdrawn as well.

Claim Rejections based on Wynkoop, Stoudt, Dial and Raven.

Claims 7 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined disclosure of Wynkoop, Stoudt, Dial and U.S. Patent 2,571,382 ("Raven"). Claims 7 and 19 have been cancelled, and therefore Applicant respectfully requests that these rejections be withdrawn.

Claim Rejections based on Wynkoop, Stoudt, Dial and Goharjou.

Claims 8 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined disclosure of Wynkoop, Stoudt, Dial and U.S. Patent 5,553,648 ("Goharjou"). Claim 8 depends from independent Claim 1, and Claim 20 depends from independent Claim 11. Goharjou discloses a portable wall component that includes a plurality of half-moon wind flaps formed therein (see Goharjou at 1:6–9 and 4:59–62). However, Goharjou cannot remedy the deficiencies of Wynkoop, Stout and Dial as expounded herein with respect to independent Claims 1 and 11. Therefore, Applicant respectfully submits that Claim 8 is allowable for at least the same reasons that Claim 1 is allowable, and thus respectfully requests that the rejection of Claim 8 be withdrawn. Likewise, Applicant respectfully submits that Claim 20 is allowable for at least the same reasons that Claim 11 is allowable, and thus respectfully requests that the rejection of Claim 20 be withdrawn as well.

Claim Rejections based on Wynkoop, Stoudt, Dial and Heise.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined disclosure of Wynkoop, Stoudt, Dial and U.S. Patent 3,217,722 ("Heise"). Claim 10 depends from independent Claim 1. Heise discloses a tent configured to be positioned adjacent to a solid wall (see Heise at 1:10–12). The Examiner asserts that

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Heise discloses the provision of a window in the tent, although Applicant respectfully submits that Heise contains no such disclosure. Regardless, even assuming the Examiner's assertion regarding the disclosure of Heise is correct, Heise nonetheless cannot remedy the deficiencies of Wynkoop, Stout and Dial as expounded herein with respect to independent Claim 1. Therefore, Applicant respectfully submits that Claim 10 is allowable for at least the same reasons that Claim 1 is allowable, and thus respectfully requests that the rejection of Claim 10 be withdrawn.

Claim Rejections based on Dial and Stoudt.

Claims 26–29 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined disclosure of Dial and Stoudt. Claim 26, which is independent, recites, among other things

a plurality of vertical support posts that have a lower portion and an upper portion opposite the lower portion;

a plurality of elongate legs having an adjustable length, the elongate legs attached to the lower portion of the vertical support posts, such that an angle α exists between the elongate leg and the vertical support post, wherein the angle α is adjustable;

Applicant respectfully traverses the Examiner's assertion that it would be obvious to replace the telescopic leg members 29 of Dial with the pivotally mounted legs 14, 18 of Stoudt. Moreover, Applicant respectfully submits that even the combined disclosure of Dial and Stoudt fails to disclose "a plurality of elongate legs having an adjustable length, the elongate legs attached to the lower portion of the vertical support posts, such that an angle α exists between the elongate leg and the vertical support post, wherein the angle α is adjustable".

First, an ordinarily skilled artisan would have no motivation to replace the telescopic leg members of Dial with the pivotally mounted legs of Stoudt. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so (see MPEP 2143.01(I)). The Examiner has failed to point to any suggestion or motivation to make the asserted combination and modification, stating only that angularly adjustable legs are "applied to Dial for the similar reasons as for its'

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[sic] application above". The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (see MPEP 2143.01(III)). Neither Dial nor Stoudt contain any suggestion of the desirability of using pivotally mounted legs to support a canopy. Therefore, Applicant respectfully submits that an ordinarily skilled artisan would have no motivation to replace the telescopic leg members of Dial with the pivotally mounted legs of Stoudt.

Second, even the combined disclosure of Dial and Stoudt fails to disclose "a plurality of elongate legs having an adjustable length, the elongate legs attached to the lower portion of the vertical support posts, such that an angle α exists between the elongate leg and the vertical support post, wherein the angle α is adjustable". To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (see MPEP 2143.03). The Examiner has failed to identify any references that discloses a side tube holder that includes "a plurality of elongate legs having an adjustable length, the elongate legs attached to the lower portion of the vertical support posts, such that an angle α exists between the elongate leg and the vertical support post, wherein the angle α is adjustable". In particular, Figure 2 of Dial illustrates an upper vertical support post 29 that has a lower vertical support post (not numbered) telescoping vertically therefrom (that is, extending at a fixed 180° angle). Figure 1 of Stoudt illustrates an upper vertical staff base that has a plurality of pivotally mounted legs 14, 18 extending therefrom. Even the combination of these features fails to disclose (a) "elongate legs having an adjustable length" that form an adjustable angle α with the vertical support post to which they are attached.

Based on the foregoing, Applicant respectfully submits that the combination of features recited in Claim 26 is patentable over the combined disclosure of Stoudt and Dial, and thus respectfully requests that the rejection of Claim 26 be withdrawn. Claims 27–29 and 31 depend from Claim 26, and further define additional features of the claimed invention. Applicant respectfully submits that Claims 27–29 and 31 are

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allowable for at least the same reasons that Claim 26 is allowable, and thus respectfully requests that the rejection of Claims 27–29 and 31 be withdrawn as well.

Claim Rejections based on Dial, Stoudt and Heise.

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined disclosure of Dial, Stoudt and Heise. Claim 30 depends from independent Claim 26. Heise discloses a tent configured to be positioned adjacent to a solid wall (see Heise at 1:10–12). The Examiner asserts that Heise discloses the provision of a window in the tent, although Applicant respectfully submits that Heise contains no such disclosure. Regardless, even assuming the Examiner's assertion regarding the disclosure of Heise is correct, Heise nonetheless cannot remedy the deficiencies of Stout and Dial as expounded herein with respect to independent Claim 26. Therefore, Applicant respectfully submits that Claim 30 is allowable for at least the same reasons that Claim 26 is allowable, and thus respectfully requests that the rejection of Claim 30 be withdrawn.

Claim Rejections based on Wynkoop, Stoudt, Dial and Higdon.

Claims 21–25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined disclosure of Wynkoop, Stoudt, Dial and U.S. Patent 1,315,497 ("Higdon"). Claim 21 is independent.

Higdon discloses a portable beach dressing room. Higdon discloses a technique for disassembling the dressing room, and rolling the disassembled components of the dressing room in the fabric that forms the top covering 37 of the dressing room, thereby providing a convenient carrying case. See Higdon at 3:8–27 and Figures 1, 10 and 11.

In contrast to the combined disclosure of Wynkoop, Stoudt, Dial and Higdon, independent Claim 21 recites, among other things

a plurality of vertical support tubes having a lower portion and an upper portion, wherein a plurality of elongate legs are attached to the lower portion of the vertical support tubes at an adjustable angle, the elongate legs having an adjustable length;

[and]

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a storage bag capable of holding the vertical support tubes, the horizontal framing members, and the instruction sheet [emphasis added]

Applicant respectfully disagrees with the Examiner's characterization of Higdon as teaching a "storage bag". Applicant also respectfully traverses the Examiner's assertion that it would be obvious to replace the flat base B of Wynkoop with the pivotally mounted legs 14, 18 of Stoudt.

First, none of the cited references disclose "a storage bag". To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (see MPEP 2143.03). The Examiner has failed to identify a reference that discloses a "storage bag". Applicant respectfully disagrees with the Examiner's assertion that this feature is disclosed in Higdon. Higdon specifically discloses that the disassembled components of the dressing room are laid upon the canopy or top covering 37, as clearly illustrated in Figure 10, which is then rolled into a bundle, as clearly illustrated in Figure 11 (see Higdon at 3:14–27). Thus, not only does Higdon fail to disclose "a storage bag", Higdon specifically teaches away from the use of a storage bag, since the canopy top is used instead of a storage bag. A *prima facie* case of obviousness may be rebutted by showing that the art, in any material respect, teaches away from the claimed invention (see MPEP 2144.05(III)). Therefore, Applicant respectfully submits that none of the cited references disclose "a storage bag", as recited in Claim 21.

Second, an ordinarily skilled artisan would have no motivation to replace the flat base of Wynkoop with the pivotally mounted legs of Stoudt. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so (see MPEP 2143.01(I)). The Examiner has failed to point to any suggestion or motivation to make the asserted combination and modification, stating only that doing so would "more securely support the tent". Even assuming for the sake of argument that this assertion were correct, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (see MPEP 2143.01(III)). Neither Wynkoop

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nor Stoudt contain any suggestion of the desirability of using pivotally mounted legs to support a canopy. Indeed, Wynkoop specifically discloses that it is preferred to use a "round and flat" base (for household applications) or cross shaped with holes for securing with stakes (for other applications) (see Wynkoop at 1:48–56). Neither of these configurations are compatible with the pivotally mounted legs of Stoudt. Therefore, Applicant respectfully submits that an ordinarily skilled artisan would have no motivation to replace the flat base of Wynkoop with the pivotally mounted legs of Stoudt.

Third, neither Dial or Higdon can remedy the deficiencies of Wynkoop and Stoudt. Neither Dial nor Higdon disclose "a plurality of vertical support tubes having a lower portion and an upper portion, wherein a plurality of elongate legs are attached to the lower portion of the vertical support tubes at an adjustable angle, the elongate legs having an adjustable length," as recited in Claim 21. Furthermore, neither Dial nor Higdon provides any motivation to combine the teachings of Wynkoop and Stoudt. Therefore, Applicant respectfully submits that neither the teachings of Dial nor the teachings of Higdon can remedy the deficiencies of Wynkoop and Stoudt.

Based on the foregoing, Applicant respectfully submits that the combination of features recited in Claim 21 is patentable over the combined disclosure of Wynkoop, Stoudt, Dial and Higdon, and thus respectfully requests that the rejection of Claim 21 be withdrawn. Claims 22–25 depend from Claim 21, and further define additional features of the claimed invention. Applicant respectfully submits that Claims 22–25 are allowable for at least the same reasons that Claim 21 is allowable, and thus respectfully requests that the rejection of Claims 22–25 be withdrawn as well.

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Conclusion.

In view of the foregoing amendments and remarks, Applicant submits that this application is in condition for allowance, and respectfully request the same. If, however, some issue remains that the Examiner feels can be addressed by an Examiner's Amendment, the Examiner is cordially invited to call the undersigned for authorization.

Respectfully submitted,

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